Supreme Court, U.S.
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No. 87-1528

In The

Supreme Court of the United States

October Term, 1987

GEORGE V.
Petitioner,

vs.

THE STATE BAR OF CALIFORNIA
Respondent.

Petition for Writ of Certiorari
to the Supreme Court of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Supreme Court of California has an obligation under the United States Constitution to admit to the practice of law in California a person

1. who was in 1986 disbarred in Florida for conduct occurring in 1976-1977 where

   a. such conduct consisted of petitioner's representing, as an attorney, various clients involved in litigation against the Church of Scientology, obtaining the confidence of those clients and acquiring information he would not have obtained except through the confidences arising from those attorney-client relationships, and then providing that information, without the knowledge or consent of those clients, to their

opponent, the Church of Scientology, by which he was employed as a trained undercover operator;

b. he, himself, researched the propriety of such conduct before engaging in it and determined that, although such conduct was a clear violation of an attorney's ethical obligations to his clients, it would give rise to no criminal or civil liabilities and, on that basis, proceeded with the conduct;

c. the foregoing conduct was established in a four-day hearing held before the State Bar Court of The State Bar of California through the testimony of petitioner and others, in which hearing the trier of fact, although adopting as his own the Statement of Facts from

the Supreme Court of Florida's decision disbarring petitioner, specifically found that petitioner's own testimoy in the California proceeding corroborated the facts essential to the California decision denying him admission;

d. he demonstrated by his testimony during the course of his California Admissions moral character hearing in 1987 that he still did not understand that the conduct justifying his disbarment in Florida constituted an egregious breach of the duty of trust he owed his clients; and

2. who was found to have lied to officers of the State of California where

a. such conduct consisted of petitioner's twice representing to the California Attorney General's

office, in filings for both 1984 and 1985, that the charitable foundation he established had no directors who were party to a court action in which there was an alleged breach of trust, when in fact petitioner was the director of said charitable foundation and was involved, in both years, in litigation in Florida in which he was alleged to have breached clients' trust; and

b. such conduct further consisted of lying to The State Bar of California during the course of his 1986-1987 California Bar application proceedings as to his prior residence history.

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THE STATE BAR OF CALIFORNIA,

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, The State Bar of California, respectfully requests that the Court deny the Petition for Writ of Certiorari, seeking review of the Supreme Court of California denying Petition for Writ of Review of the decision of the Committee of Bar Examiners of The State Bar of California refusing, on moral character grounds, to certify petitioner as qualified to practice law in California. On January 6, 1988, the

Supreme Court of California, without opinion, denied petitioner's Petition for Writ of Review. George V. v. The State Bar of California (Cal. S.Ct. Docket No. S001768).

I. RESPONDENT'S STATEMENT

A. The California Bar Admission Process

In California, admission to the practic of law is an exercise of one of the inheren powers of the California Supreme Court. Merco Constr. Engineers, Inc. v. Municipal Court, 21 Cal.3d 724, 727-729 (1978); Stratmore v. State Bar, 14 Cal.3d 887, 889 (1975); Brydonjack v. State Bar, 208 Cal. 439, 443 (1929); People v. Turner, 1 Cal. 143, 150 (1850); see Cal. Const., art. I, § 1. To assist the California Supreme Court in the administration of the admissio process, the Board of Governers of The Stat Bar of California (hereinafter "State Bar") pursuant to California Business and Professions Code sections 6046 and 6046.5,

appoints a Committee of Bar Examiners (hereinafter "Committee"). This Committee, as the administrative arm of the California Supreme Court in admissions matters, has primary responsibility for the bar examination process. In re Admission to Practice Law, 1 Cal.2d 61, 67 (1934); Chaney v. State Bar, 386 F.2d 962, 966 (1967).

In that regard, the committee has the power to (a) examine all applicants for admission; (b) administer the requirements for admission to practice; and (c) certify to the California Supreme Court, for admission, those applicants who fulfilled the requirements. Cal. Bus. & Prof. Code, §§ 6060 and 6064; see also § 6060.5 and 6062; Cal. Rules of Court, rule 951(c); rule 1, § 1, Rules Regulating Admission to Practice Law in California (hereinafter "Rules Regulating Admission"). One of the requirements for admission to practice law

is that the applicant be of good moral character. Cal. Bus. & Prof. Code, § 6060(b). All acts of the Committee are subject to review by the California Supreme Court. Cal. Rules of Court, rule 952(c). The Committee's actions are mere recommendations and are not binding on the court. Siegel v. Committee of Bar Examiners, 10 Cal.3d 156, 173 (1973); Greene v. Committee of Bar Examiners, 4 Cal.3d 189, 191 (1971); Bernstein v. Committee of Bar Examiners, 69 Cal.2d 90, 97 (1968).

Upon its independent review, the court may uphold the administrative determination of the Committee, Greene v. Committee of Bar Examiners, 4 Cal.3d 189 (1971), or it may reverse that determination, Siegel v. Committee of Bar Examiners, 10 Cal.3d 156 (1973).

In California, the trial of bar applicant moral character matters is conducted before a Hearing Panel of the

State Bar Court. Rule X, § 102(e) of Rules Regulating Admission. The establishment of State Bar Court hearing panels are provided for in the Rules of Procedure of The State Bar of California (hereinafter "Rules of Procedure"). The specific Rules of Procedure applicable to bar admission matters are delineated in rule X, section 102(e) of the Rules Regulating Admission.*

At the Hearing Panel "trial," the applicant may be represented by counsel (as petitioner was), may present evidence of his moral character, and may confront and cross-examine adverse witnesses. Documentary evidence is introduced and a transcript is made of the proceedings.

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* The Rules Regulating Admission are published in volume 23, West's Annotated California Codes (Rules of Court), part 2, page 478 et seq. The Rules of Procedure are published in volume 23, West's Annotated California Codes (Rules of Court), part 2, page 590 et seq.

Thereafter, the Hearing Panel makes finding of fact and a recommendation to the Committee as to whether the applicant has the requisite moral character. The finding and recommendation of the Hearing Panel are binding upon all parties unless, within 45 days, the applicant, the examiner, or th Committee itself elects to have a hearing before the Committee.* Rule X, § 103, Rules Regulating Admission. The hearing before the Committee consists of oral argument on the record adduced before the Hearing Panel and any memoranda timely filed. In addition, the applicant may mak a statement under oath and "will be requir to respond under oath to questions from th Committee." Rule X, § 103(f)(2), Rules Regulating Admission.

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* In 1987, subsequent to this procedure and in no way related to it, the procedure was changed so that the Hearing Panel decisions are reviewed by the Review Department of the State Bar Court and not by the Committee.

B. The Facts

1. Introduction

Petitioner took and passed the Attorney's Examination of the California Bar Examination in February 1984.* However, petitioner's certification to practice law was delayed pending a moral character investigation. Extensive hearings were held before a three-member State Bar Court Hearing Panel on January 13, 16, 23 and 27, 1987, principally directed, although not limited to, the facts and circumstances surrounding petitioner's 1986 disbarment from the practice of law in Florida.

On March 26, 1987, the Hearing Panel of the State Bar Court filed its Findings of Fact and Recommendation and unanimously

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* Petitioner was admitted to the Missouri Bar in 1975 and the Florida Bar in 1976. Petitioner was disbarred from the Florida Bar in 1986. He was disbarred in Missouri in 1987.

recommended to the Committee that petition should not be certified to practice law in California because he did not possess the requisite good moral character. Cal. Bus. Prof. Code, §§ 6060(b), 6062(b); rule X, § 101(a), Rules Regulating Admission.

On May 28, 1987, the Committee issued its Findings and Conclusions, unanimously concurred with the recommendation of the Hearing Panel, and denied petitioner certification. Thereafter petitioner sought review by the California Supreme Court and review was denied on January 6, 1988.

The fundamental question before the State Bar and before the California Supreme Court, in its consideration as to whether to grant review, was whether petitioner was a fit and proper person to practice law in California. That question turned upon whether petitioner had committed or was likely to continue to commit acts of moral

turpitude. Hightower v. State Bar, 34 Cal.3d 150, 157 (1983); Hallinan v. Committee of Bar Examiners, 65 Cal.2d 447, 453 (1966).

2. Petitioner's 1986 Disbarment from the Practice of Law in Florida

In November 1986, petitioner was disbarred from the practice of law in Florida for conduct which occurred primarily in 1976-1977. The Florida Bar v. Merrell G. Vannier, Nov. 26, 1986, No. 61,691. Petitioner did not appeal the Florida Supreme Court's decision, and that decision has long since become final.* In admission proceedings before the California State Bar, the Hearing Panel adopted as its own findings the findings of fact of the Florida Supreme Court as set forth in its November 26, 1986 decision.

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* Petitioner testified that on the advice of his counsel, he asserted the fifth amendment privilege against self incrimination and did not testify on his own behalf at the Florida disciplinary hearings.

The California findings were, however, based not only on the record in the Florida proceedings, but upon petitioner's own testimony in four days of hearings in California. The facts and circumstances surrounding petitioner's Florida disbarment and the California findings of bad moral character are clearly, and we believe accurately, stated in the Florida decision set forth in part as follows:

> "The allegations against Vannier can be capsuled into one basic charge: that Vannier was an undercover agent for the Church of Scientology (the Church) who used his position as a member of the Florida Bar for purposes contrary to the interests of his clients and to his oath as an attorney and to the Code of Professional Responsibility. The evidence at trial showed the following: In 1975, acting through front corporations, the Church purchased a major building in Clearwater, Florida, and began operations which attracted public attention. Public disputation arose between the Mayor, Gabriel Cazares, and the Church. As a result, in early 1976 the Church sued Mayor Cazares in a federal court and Mayor Cazares and

his wife sued the Church in a state court. In reaction to the public dispute, cognizant officials of the Church identified enemies to be infiltrated which included, inter alia, the Mayor and State Attorney. Vannier, a member of the Church in Missouri, was also a member of an autonomous section of the Church responsible for overt and covert intelligence operations. Vannier and his wife were assigned the code name 'Ritz' and moved to Clearwater, Florida, in March 1976. Vannier obtained permission to work as a volunteer at the state attorney's office, which was conducting an investigation of the Church's local operations, and his wife worked as a volunteer at Mayor Cazares' election headquarters. In addition, Vannier was soon introduced by his wife to Mayor Cazares. Vannier repeatedly offered and urged his services as counsel to Mayor Cazares in the suit in state court against the Church and was hired as such in December 1976. By this time Vannier had ecome associated with a local law firm. By virtue of his status as counsel to Mayor Cazares, Vannier sought and obtained access to the litigation files of another person involved in litigation with the Church and the files of Mayor Cazares and another lawyer who was defending the Mayor in federal court. In mid to late 1977, the Cazares became dissatisfied with Vannier's legal advice and his handling of their suit and dismissed both Vannier and the suit. Vannier attempted to

> persuade the Mayor that the dismissal must be with prejudice. The Mayor later obtained other counsel and reinstated the suit. In late 1977, Vannier left the law firm with which he was associated without notice, without turning over pending cases and clients, without leaving a forwarding address, and without removing his personal effects, e.g., diplomas, from his office. The Church, or its agents, were involved in numerous civil and criminal cases throughout the United States during this period of time. As a result of discovery in these civil and criminal cases, particularly the seizure of documents from the Church's Los Angeles headquarters, it was revealed that Vannier was an undercover agent for the Church. These disciplinary proceedings followed."

Petitioner argued before the Hearing Panel, as he does before this Court, that the findings of the Florida Supreme Court were fundamentally unsound in that they were based on unsupported hearsay. The Hearing Panel offered to review the transcripts of the Florida disciplinary proceeding to determine whether the alleged hearsay was adequately authenticated and supported by the

record. However, petitioner's counsel declined the Hearing Panel's offer.

Furthermore, the Hearing Panel, in its findings, found that petitioner's testimony before the Hearing Panel, with certain minor and immaterial exceptions, confirmed and corroborated the essential facts of the Florida decision. Indeed, petitioner did not dispute the allegations of misconduct which resulted in his disbarment from the practice of law in Florida. In short, petitioner's factual admissions, independent of the Florida record, support the California decision.*

In mitigation, petitioner contended that no party was injured by his conduct, that he had no prior record of discipline, that the events occurred more than ten

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* Appropriate citations to the California record were contained in Respondent's Brief to the California Supreme Court. In the interest of economy, they are omitted from this Response.

years ago when he was a recent law school graduate, that he did not violate any law, and that he expressed remorse for his conduct. The Hearing Panel considered these factors but did not find them persuasive.*

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* The record shows that although petitioner's conduct did not result in criminal prosecution, petitioner researched the law and was fully aware that his conduct would be in violation of the Code of Professional Conduct of the Florida Bar. Nevertheless, petitioner proceeded. Furthermore, at the time, he was the head of his law firm's litigation department and had been an attorney licensed to practice law in Missouri since 1975. Finally, although petitioner admitted that he engaged in professional misconduct in Florida, he still does not understand that his misconduct constituted a breach of the trust that he owed his clients.

3. Petitioner's Responses Under Oath in the California Proceeding*

a. The McLean Matter

On June 17, 1982, petitioner's deposition was taken, under oath, in the case of Nancy McLean and John McLean v. The Church of Scientology of California et al. In response to the question, "Do you know who Nancy McLean is?" petitioner responded, "No." At the same deposition, in response to the question, "Do you know

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* Before the California Supreme Court, as well as before this Court, petitioner contends that he did not have proper notice of the "Response" allegations. However, the Notice of Hearing informed petitioner that the purpose of the California hearing would be to examine petitioner's moral character and fitness and would not be limited to the facts and circumstances surrounding petitioner's Florida disbarment, and petitioner's counsel did not object to the Response inquiries by the Hearing Panel or Committee. Moreover, petitioner had ample opportunity before the California Hearing Panel and the Committee to explain his answers and did so in a thorough manner. Petitioner's explanations were not believed, however.

who John McLean is?" petitioner responded, "No." In fact, petitioner knew at the time that Nancy and John McLean were plaintiffs in a case against him and that both were former members of the Church.

Petitioner contends that he misunderstood the question to be whether he knew the McLeans, not whether he knew who they were. However, the Hearing Panel found that the questions were clear, unequivocal and unambiguous.

b. False Statement in His California Bar Application

On November 7, 1983, petitioner filed an Application for Admission to Practice Law in California. In response to the question, "State every residence location," petitioner stated, under oath, that between October 1977 and March 1978 he resided at 243 Oakridge Drive, O'Fallon, Missouri. The Hearing Panel found that petitioner misstated the fact that between October

1977 and December 1977, he took up residence in Canada.

Petitioner denied that he went to Canada to hide from the proceedings that were taking place in Florida. However, petitioner testified that (1) he left Florida because he "was basically laying low because there was anticipated media coverage about my conduct in Florida"; (2) he left Florida at the request of the Guardians, who paid for his relocation expenses; and (3) he remained in Canada and was in continuous communication with the Guardians who continued to pay his expenses.

c. Petitioner's False Documents Filed with the California Attorney General

In or about 1984, petitioner established and operated a non-profit public interest law firm and foundation entitled The Liberty Center of Southern California.

As a charitable foundation, the organization was required to file periodic documents with the California Attorney General's office. In 1985 and 1986 petitioner filed reprots with the Attorney General's office for the years 1984 and 1985. In response to the question, "Were you or any of your officers, directors or trustees a party to any court action in which there was an alleged breach of trust? If 'yes,' attach explanation," petitioner responded, "No." The Hearing Panel found that petitioner's responses were not truthful.

Petitioner was the director of the foundation. Petitioner admitted that at the time he filed the periodic reports, he was involved in litigation with the Florida Bar and that some of the litigation he was involved with in Florida involved a breach of trust.

ARGUMENT

I

REASONS FOR DENYING THE WRIT OF CERTIORARI

Review on writ of certiorari is not a matter of right and will be granted only when there are special and important reasons. Rule 17, Rules of the Supreme Court of the United States. None of the reasons for granting certiorari, as set forth in rule 17, are available here. There is no decision by a federal appellate court (rule 17.1(a); the California Supreme Court decision does not conflict with that of another state court of last resort or of a federal appeals court (rule 17.1(b)); finally, the California Supreme Court decision does not decide an important question of federal law that should be decided by this Court nor is its decision in conflict with any decision of this Court.

II

PETITIONER RECEIVED A FAIR HEARING AND DUE PROCESS OF LAW

This court has long recognized the right of each state to select its own bar so long as the state does not exercise this power in an arbitrary or discriminatory manner. Konigsberg v. State Bar of California, 77 S.Ct. 722, 733, 353 U.S. 252, 273 (1957). However, any qualifications set by the state must have a rational connection with an applicant's fitness to practice law. Selware v. State Bar of New Mexico, 77 S.Ct. 752, 756, 353 U.S. 232, 239 (1957).

There can be no dispute that petitioner's conduct, as exemplified by the record before The State Bar of California and its Committee of Bar Examiners and as reviewed by the Supreme Court of California supports the decision of the Supreme Court of California to deny petitioner admission to practice law in California absent some

violation of petitioner's federal rights to due process.

The standard for due process in bar application matters was established in Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 1181 (1963). Willner held that a bar applicant was denied due process when he was denied admission to the New York Bar without a hearing before either the committee or the court. A concurring opinion by Justice Goldberg stated:

> "The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to the denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." 373 U.S. at 107, 83 S.Ct. at 1182.

In the present proceeding, it is crystal clear that petitioner was informed of the nature of the evidence against him and accorded an opportunity to rebut this

evidence. There were four days of hearing before a California State Bar Court Hearing Panel which afforded petitioner ample opportunity to explain what happened in Florida and the apparent falsehoods arising from his activities in California. A unanimous State Bar Court Hearing Panel and a unanimous Committee, after seeing petitioner and hearing his explanations, concluded that he was of bad moral character and refused to recommend his admission to practice law in California. Petitioner knew the charges in time to have ample opportunity to rebut them. He had an opportunity to respond to those charges, to be heard and to present evidence in rebuttal. He received a written decision with supporting reasons articulated, and he had opportunity to seek judicial review of that decision. Petitioner clearly received ample due process.

III

PETITIONER'S CONTENTIONS ARE WITHOUT MERIT

A. The Full Faith and Credit Challenge

Petitioner urges that the California Hearing Panel believed itself obligated to give full faith and credit to the Florida disbarment decision and, for this reason, refused to hear petitioner's constitutional challenges to that decision.

Our response:

1. The place to challenge the constitutionality of the Florida Bar decision was in Florida (which petitioner did, but did not prevail) and through the seeking of appropriate review in this Court (which petitioner did not).

2. The California record contains more than ample evidence--through testimony of petitioner and exclusive of the Florida decision--on which to base a refusal to admit petitioner.

3. For the foregoing reasons, the full faith and credit clause issued is just not present here. The California decision was made only after an extensive hearing in which petitioner testified at length and is sustained by the record in the California proceeding.

B. Petitioner's Due Process Contentions

As explained, supra, pp. 20-22), petitioner had a fair hearing and ample opportunity to know what was being considered against him and to explain his conduct. In In re Ruffalo, 390 U.S. 544 (1968), on which petitioner relies, the attorney was charged with one violation and, after testifying as to his innocence on that charge, was recharged on the basis of his own exculpatory testimony. In effect, the attorney in Ruffalo was tricked. This did not happen here. Petitioner was not "tricked" by the Committee inquiry. He was given ample

notice to know what specific incidents relating to his credibility the examiner wanted to pursue and he was given ample opportunity to explain these incidents. This was not a case of petitioner saying something to explain his innocence and then being recharged on the basis of that testimony. Ruffalo is just not applicable here. Petitioner had a fair hearing.

Petitioner also contends that he was denied due process because the investigative arm of the Committee referred petitioner to hearing and the entire Committee ultimately made the recommendation that he be disbarred. This contention is specious. As this Court has stated:

> "It is not surprising, therefore, to find that '[t]he case law, both Federal and State generally rejects the idea that the combination [of] judging [and] investigating functions is a denial of due process.' 2 K. Davis, Administrative Law Treatise, § 13.02, p. 175 (1958)." Withrow v. Larkin, 421 U.S. 35, 52, 95 S.Ct. 1456, 1467.

C. Petitioner's Claim that He Will Be Foreclosed from a Judicial Determination of His Right to Practice Law Unless this Court Grants Review Is Without Merit

The Supreme Court of California made a judicial determination that petitioner is not morally qualified to practice law in California. The State Bar Court Hearing Panel and the Committee act as the administrative arm of the California Supreme Court in matters pertaining to admission and discipline of lawyers. Chronicle Publishing Co. v. Superior Court, 54 Cal.2d 548, 566 (1960). The State Bar Court and Committee decisions are only recommendations. The actual decision as to whether an applicant is to be admitted is made by the California Supreme Court. We are aware of no rule of this or any other court that would require the Supreme Court of California to grant plenary review with ful briefing, oral argument and written opinion, to each and every applicant who, because of moral

character or for whatever other reason, is denied certification to practice law in California.

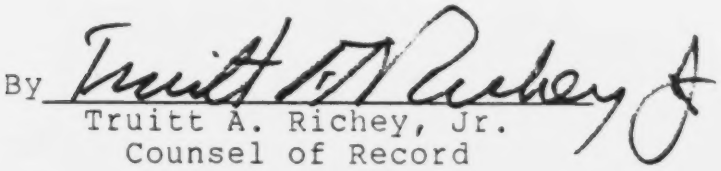
CONCLUSION

For the foregoing reasons, it is respectfully submitted the Petition for Writ of Certiorari should be denied.

Dated: April 18, 1988

Respectfully submitted,

Diane C. Yu
Truitt A. Richey, Jr.
Richard J. Zanassi

By 
Truitt A. Richey, Jr.
Counsel of Record
Attorneys for
The State Bar of California

DECLARATION OF SERVICE BY MAIL

I, Chiyeko Kimura, declare as follows:

I am a citizen of the United States and a resident of the County of San Francisco. I am over the age of eighteen years and not a party to the within entitled action. My business address is 555 Franklin Street, San Francisco, California 94102. On April 18, 1988, I served the within

RESPONDENT'S BRIEF IN OPPOSITION

on the interested parties by placing a true copy thereof enclosed in a sealed envelope with first-class postage thereon fully prepaid in the United States mail at San Francisco, California, addressed as follows:

ROBERT NELSON HARRIS, JR.
617 South Olive Street, Suite 915
Los Angeles, California 90014

H. PETER YOUNG
1500 South Holt Avenue, No. 1
Los Angeles, California 90035

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 18th day of April, 1988 at San Francisco, California.

